D.B. Civil Special Appeal No.124/2006

Smt. Meena Devi & Ors.
Vs.
Milap Chand & Ors.

Date of Judgment :: 08-08-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri S.R. Jain, for the appellant.

This special appeal is directed against the order of the learned Single Judge dismissing the appellant's application for restoration. The appellant had filed application for restoration of a civil first appeal which has been dismissed in default of appearance.

From the record of the connected case it appears that the appeal was dismissed on the very first date. As the appeal was dismissed before issuing notice muchless appearance by the other side, we took up this matter for final disposal. In the application for restoration it was stated that the elder brother of the advocate, Shri S.R. Jain, expired on 5.2.2005 and therefore the advocate had to go to Udaipur and he could not attend the case on 8.2.2005 when the appeal was taken up. In support of the plea the advocate has filed his own affidavit.

In the circumstances, being satisfied that the reasons for non-appearance were beyond control and bonafide, we allow the prayer. The order dated 10.08.2005 dismissing the restoration application as well as the order dated 8.2.2005 dismissing the civil first appeal are set aside. The Civil First Appeal No.39/2005 is restored to its original number.

The appeal is allowed accordingly.

[MOHD. RAFIQ],J. [S.N.JHA],CJ.

Praveen